

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ROBERT J. LABONTE,

Plaintiff,

v.

UNITED STATES,

Defendant.

No. 18-1784C

(Chief Judge Sweeney)

**DEFENDANT'S MOTION FOR AN
ENLARGEMENT OF TIME TO RESPOND TO THE COMPLAINT**

Defendant, the United States, respectfully requests that the Court grant a 17-day enlargement of time, from April 16, 2019, to and including May 3, 2019, to respond to the complaint in this action. On April 15, 2019, plaintiff's counsel's office advised us that plaintiff does not consent to this motion and intends to file an opposition to this motion.

This is a military pay case. Between the date when plaintiff filed the complaint and January 22, 2019, the date our response originally was due, undersigned counsel was furloughed for several weeks and was only able to perform minor work on his cases, including filing motions to stay proceedings due to the lapse in appropriations. Counsel's lengthy absence from the office during this time period and inability to perform any meaningful substantive work on this case was beyond his control.

On January 18, 2019, the Court issued an order staying this case pending Congress' appropriation of funds to the Department of Justice. ECF No. 9. The Court lifted the stay on February 6, 2019. ECF No. 11. On February 20, 2019, the Court set a revised deadline of April 5, 2019 for the Government to respond to the complaint. ECF No. 13. On April 8, 2019, the

Court granted our motion for an enlargement of time of 11 days to respond to the complaint. An additional enlargement of time still is required.

We have worked diligently on our response to the complaint, submitted our draft response to agency counsel for review, and have received back comments and suggested changes to the draft response. Prior to finalizing our response, additional work must be performed, including further revising the draft response (including taking into account the agency's comments), submitting the revised draft response for internal Department of Justice review, making any additional changes that may be required, and if there are any additional changes as a result, resubmitting the draft response to the agency additional review. Further, once this review process is complete, we must finalize our response for filing.

Although we had anticipated filing our response to the complaint by current deadline, undersigned counsel had other work that unexpectedly required significant attention in recent days, most particularly *Randle v. United States*, Fed. Cir. No. 19-1674 (informal response brief and appendix filed on April 15, 2019, subject to the Court's compliance review). And as discussed in our prior motion for an enlargement of time, counsel had other matters that required attention recently, including *North Wind Site Services, LLC v. United States*, Fed. Cl. No. 19-148C, a bid protest in which we filed our reply on April 2, 2019, and the Court conducted a telephonic oral argument on April 5, 2019.

In addition, undersigned counsel will be out of the office on previously planned leave beginning on April 18, 2019, and will not return to the office until at least April 29, 2019. Although we regret having to seek an additional enlargement of time, it is necessary to enable us to submit a response to that we believe will best assist the Court in resolving this case.

For these reasons, we respectfully request that the Court grant this motion for an
enlargement of time.

Respectfully Submitted,

JOSEPH H. HUNT
Assistant Attorney General

ROBERT E. KIRSCHMA, JR.
Director

s/ *Douglas K. Mickle*
DOUGLAS K. MICKLE
Assistant Director

s/ *Richard P. Schroeder*
RICHARD P. SCHROEDER
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 305-7788
email: richard.schroeder@usdoj.gov

Dated: April 16, 2019